BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: UPLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018120181 ORDER DENYING REQUEST FOR RECONSIDERATION RE MOTION TO DISMISS

On February 4, 2019, the undersigned administrative law judge issued a prehearing conference order that denied Student's motion to dismiss Upland Unified School District's due process hearing request, finding that the notice of "withdrawal" filed by respondent Student was not grounds for dismissal of this matter. Student was notified that if he chose not to participate at the hearing, the hearing would nevertheless proceed as a default prove-up, with Upland continuing to bear the burden of proof.

On February 14, 2019, the undersigned ALJ denied Student's second motion to dismiss, finding that Student's defense to Upland's claim required a hearing on the merits, and that the existence of an asserted defense was not grounds for dismissal.

On February 20, 2019, Student filed a renewed motion to dismiss on the grounds of his previous "withdrawal," and grounds previously argued in the earlier motions to dismiss (and in a challenge for cause against the undersigned ALJ). Parent submitted the same declaration attached to an earlier motion, with an added conclusion that Student is prejudiced by the lack of counsel. The moving papers stated that Student was pleading the Fifth Amendment of the United States Constitution. The renewed motion will be treated as a motion for reconsideration.

Opposition from Upland has not yet been received.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

DISCUSSION

Student alleges no new facts, circumstances or law in support of the requested reconsideration. Parent's declaration is a duplicate of one previously filed, with the inclusion of a single conclusory statement of prejudice. That declaration was already considered in a previous motion, and contains no new information.

Student's assertion that the matter should be dismissed due to his filing of a "withdrawal" from this matter is also untimely made. This renewed motion was not received within 10 days of the original denial of Student's request for dismissal on the ground of withdrawal in the February 4, 2019 prehearing conference order, or service of the Spanish language translation of that order on Student on February 6, 2019.

Accordingly, Student's request for reconsideration is denied.

The Fifth Amendment provides that no person shall be compelled in any criminal case to be a witness against himself. The Fifth Amendment applies only in criminal matters, and no crime is alleged against Parent or Student by this due process claim, where the sole issue is whether Upland may assess Student pursuant to a March 2018 assessment plan. Therefore, Parent is urged to participate in the due process hearing.

ORDER

1. Student's motion for reconsideration of the orders on his previous motions to dismiss is denied.

2. The due process hearing date of February 21, 2019 is confirmed.

DATE: February 20, 2019

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings